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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES, *Petitioner*

v.

UNITED AIR LINES, INC., *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Petitioner, the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes (hereinafter called "the Brotherhood"), prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit, entered in the case of *Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes* v. *United Air Lines* (Case No. 15,176) on December 17, 1963 (Appendix A hereto).

OPINIONS BELOW

The opinion of the Court of Appeals, printed in Appendix B hereto, *infra*, p. 2a, is not yet reported. The opinion of the United States District Court for the Southern District of Ohio, Western Division at Cincinnati, printed in Appendix C hereto, *infra*, p. 10a, is not yet reported.

JURISDICTION

The judgment of the Court of Appeals was entered on December 17, 1963 (App. A, *infra*, p. 1a). The Jurisdiction of this Court is invoked under Title 28, United States Code, Section 1254(1).

QUESTIONS PRESENTED

In the opinion of the petitioner, the following questions are presented by this petition:

1. Did the United States District Court have jurisdiction of the subject matter of a complaint by the Brotherhood against United Air Lines, Inc., alleging that United's refusal to assume the obligations of the collective bargaining agreement of August 3, 1959, between Capital Airlines and the Brotherhood after the merger of Capital into United constituted a violation of that agreement, the Railway Labor Act, Delaware law, and the merger contract, and asking for a declaration of the rights of the parties with respect thereto and for injunctive relief against such violations?

2. Did the National Mediation Board have exclusive jurisdiction of the subject matter of the Brotherhood's complaint?

STATUTES INVOLVED

The statutory provisions involved are (1) Sections 1331, 1337, 2201 and 2202 of Title 28 of the United States Code (28 U.S.C.A., Sections 1331, 1337, 2201 and 2202); (2) Sections 2, First, 2, Seventh, 2, Ninth, 5, Second, 6 and 204 of the Railway Labor Act (45 U.S.C.A., Sections 152, First, Seventh, Ninth, 155, Second, 156 and 184); and (3) Section 328 of the Delaware General Corporation Law. They are printed in Appendix D, *infra*, p. 12a *et seq.*

STATEMENT

This litigation began with a complaint filed by the Brotherhood against United Air Lines in the United States District Court for the Southern District of Ohio, Western Division at Cincinnati, asking that Court to determine the legal rights of the parties with respect to a controversy between them concerning the application of a collective bargaining agreement, dated August 3, 1959, between the Brotherhood and Capital Airlines, to employees covered by such agreement who became employees of United Air Lines upon the merger of the two air carriers on June 1, 1961, and requesting the Court to issue an injunction to enjoin United from continuing a refusal to apply the provisions of such agreement to its employees. (R. 1-13.)[1] United Air Lines filed a motion asking, *inter alia*, the District Court to dismiss the complaint for lack of jurisdiction over the subject matter thereof on the ground that it involved a representation dispute subject to the exclusive jurisdiction of the National Mediation Board. (R. 18-20.) The District Court granted this motion

[1] Reference is to pages of the certified record in the Court of Appeals.

(App. C, *infra*, p. 11a) and the Court of Appeals affirmed (App. A, *infra*, p. 1a).

The collective bargaining agreement involved was executed pursuant to the Railway Labor Act (45 U.S. C.A., Sections 151 et seq.) by Capital Airlines and the Brotherhood as the certified representative of the craft or class of clerical, office, stores, fleet and passenger service employees of that air carrier effective August 1, 1948. The agreement was revised from time to time, the last revision becoming effective August 3, 1959. (R. 14.)

Article 1(b) of the agreement dealt with the contingency of a future merger involving the air carrier and read as follows:

> "All provisions of this agreement shall be binding upon the successors or assigns of the Company (i.e. Capital) and in case of a consolidation or merger, the Company (i.e. Capital) will notify the Brotherhood at least 90 days prior to such consolidation, or merger, and representatives of the Company (i.e. Capital) and the Brotherhood will meet and negotiate for the procedure to be followed and the protection to be afforded the employees involved."

On August 11, 1960, United and Capital, both Delaware corporations, entered into a merger agreement, providing for the merger of Capital into United as the surviving corporation. Section III, paragraph 1, of the merger agreement transferred to United all the rights, privileges, powers and franchises of Capital subject to all the restrictions, disabilities, and duties of each of the constituent corporations, as well as all of the property, real, personal and mixed of Capital. This section of the merger agreement also dealt with the ob-

ligations of United for the duties, liabilities and debts of Capital. The duties thus imposed upon United by the merger agreement for the debts, liabilities and duties of Capital read as follows: (R. 5, 6)[2]

> "United * * * shall be subject to all of the restrictions, disabilities and duties of each of the Constituent Corporations; * * * and all debts, liabilities and duties of each of the Constituent Corporations shall thenceforth attach to United, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it."

At all times pertinent, Section 328 of the Delaware General Corporation Law provided, as follows: (App. D, p. 16a)

> "The liability of corporations * * * existing under the laws of this state * * * or the rights or remedies of * * * persons doing or transacting business with the corporation, shall not in any way be lessened or impaired by the * * * merger of two or more corporations * * *."

United and Capital filed a joint application with the Civil Aeronautics Board for approval of the merger agreement under Section 408 of the Federal Aviation Act of 1958 (49 U.S.C.A., Section 1378). The merger was approved by the Board on April 3, 1961. *United-Capital Merger Case* (Order No. E-16605, Docket No. 11699). The Board's approval was affirmed upon judicial review. *Northwest Airlines* v. *Civil Aeronautics Board*, 303 F. 2d 395 (D.C. Cir., 1962).

The merger was consummated on June 1, 1961. Approximately 2,700 former Capital employees covered by

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[2] Section 259 of the Delaware General Corporation Law imposed the same duties on United. (App. D, p. 16a).

the collective bargaining agreement between Capital and the Brotherhood became employees of United. (R. 11, 25.) Approximately 2,200 of these employees were clerical, office, fleet and passenger service employees unrepresented on United. Approximately 500 were ramp and stores employees represented on United by the International Association of Machinists (I.A.M.). The craft or class to which the 2,700 former Capital employees belonged numbered approximately 10,000 on United prior to the merger and was unrepresented. (R. 25.)

Before, during, and after the proceedings before the Board, the Brotherhood unsuccessfully sought by negotiation to persuade United to assume the obligations of the agreement as to the employees covered thereby. United refused on the ground that the agreement terminated automatically upon the consummation of the merger. (R. 6, 7, 8, 9, 42, 51-53.) Among the employee contract rights which United thus refused to recognize were those relating to seniority, pay, protection against arbitrary discipline and discharge, procedures for the adjustment of grievances and against arbitrary transfer, provisions for the health and safety of employees, and various other benefits such as sick leave allowances, overtime allowances, group insurance and pension benefits, and maintenance of union membership and check-off union dues. (R. 9.)

At no time has the Brotherhood sought to obtain representation rights for the craft or class on United by enforcement of the agreement, but only to protect contract rights of employees. (R. 58.)

The Brotherhood also exhausted all available administrative remedies.

It intervened in the C.A.B. proceedings and asked the Board to condition any approval of the merger

upon the assumption by United of the obligations of the agreement. (R. 7, 22.) United opposed on the ground that the agreement lawfully terminated upon consummation of the merger. The Board declined "to pass on the issue of whether United would be justified, as a matter of contract or labor law, in ignoring the agreement." It left the matter "as a problem to be worked out between the Companies and employees in accordance with regular procedures applicable to the matter of representation and agreement." (R. 23.)[3]

Since the revision of the agreement of August 3, 1959, containing Article 1(b), providing that the agreement should be binding on successors and assigns of Capital, was executed during mediation, the Brotherhood also applied to the National Mediation Board for an interpretation of the meaning or application of such Article pursuant to the provisions of Section 5, Second, of the Railway Labor Act (45 U.S.C.A., Section 155). (R. 8.) After hearing, at which United appeared and opposed the Brotherhood application (R. 8), the Mediation Board, on August 25, 1961, granted the application and issued an opinion interpreting Article 1(b) of the agreement. (R. 15-18.) This opinion found that the provisions of Article 1(b) of the collective bargaining agreement of August 3, 1959, between Capital and the Brotherhood were unambiguous and clearly meant precisely what they say. The Mediation Board's conclusion on the point read as follows: (R. 8, 17)

> "After reviewing the record of mediation in NMB Case No. A-6037, as well as the transcript of hear-

[3] The Brotherhood sought review of the Board decision in the United States Court of Appeals for the District of Columbia Circuit (Case No. 16,360—R. 23), but withdrew the petition when the Board made clear it had simply declined to act on the Brotherhood request. (R. 24.)

> ings and briefs submitted by the Brotherhood and United Air Lines, Inc., this Board is of the opinion that the language of Article 1(b) of the agreement of August 3, 1959, reading 'all provisions of this agreement shall be binding upon the successors and assigns of the company' is clear and unambiguous. In other words, the language means just what it says and we so find."

At the same time the Mediation Board found that it did not have jurisdiction to spell out the rights and obligations of the parties after the merger of Capital and United. The conclusions of the Mediation Board upon this point read as follows: (R. 17)

> "It must be pointed out, however, that the mediation agreement was executed on August 3, 1959, while the merger agreement between Capital and United was executed on August 11, 1960. Section 5, Second, of the Railway Labor Act, in our view, delegates no authority to this Board to interpret or construe the merger agreement, which is a document foreign to its processes. *The legal authorities cited by the Brotherhood may sustain its position, but this Board lacks jurisdiction to do anything more by interpretation than to construe the instrument produced through its mediatory function.* It is true that the language relied upon looks to the future, but can it be said that the quoted provision clothes this Board with authority to pass upon issues which arise out of subsequent developments such as mergers or consolidations? We think not. In sum, we find that the language is clear and unambiguous, but fail to find authority to spell out the rights and obligations of the parties in the situation presented here." (Emphasis supplied.)

Following the issuance of the Mediation Board's opinion, the Brotherhood made another effort to settle

the matter by negotiation with United upon the basis of the Mediation Board's decision. United refused to even meet with the Brotherhood to discuss the effect of the decision. (R. 9.)

Finally, the Brotherhood sought to obtain a determination of the rights of the employees involved through the processing of grievances pursuant to the provisions of Article 43 of the agreement which provides for a Board of Adjustment pursuant to the requirements of Section 204 of the Railway Labor Act (45 U.S.C.A., Section 184) to render final and binding determinations on the application and interpretation of the agreement. However, United refused to accept and process these grievances, thus frustrating the Board of Adjustment arbitration process. (R. 11, 12.)

The Brotherhood, therefore, on November 9, 1961, filed its complaint in the District Court for declaratory and injunctive relief. (R. 2-13.)

The complaint raised clear-cut questions of law for adjudication. The Brotherhood alleged the existence of the collective bargaining agreement of August 3, 1959, between Capital and the Brotherhood containing the provision that such agreement "shall be binding upon the successors or assigns of the Company"; the provisions of the merger agreement between Capital and United requiring United to take over the liabilities and duties of Capital to the same extent as if such liabilities and duties had been incurred or contracted by United; the requirements of Delaware law to the same effect; the merger of Capital and United pursuant to such merger agreement and law; and the refusal of United to assume the liabilities and duties of said collective bargaining agreement between the Brotherhood

and Capital despite prolonged efforts of the Brotherhood to obtain this result. (R. 1-9.)

The complaint alleged that United's refusal to assume the obligations of said bargaining agreement of August 3, 1959, was unlawful because such refusal (1) violated the provisions of Article 1(b) of said collective bargaining agreement of August 3, 1959, between Capital and the Brotherhood; (2) violated the provisions of Section III, paragraph 1 of the merger agreement of August 11, 1960, between Capital and United; (3) violated the Delaware General Corporation Law, which requires United to assume the liabilities and duties of Capital; (4) violated the requirements of Section 2, First, of the Railway Labor Act (45 U.S.C.A., Section 152, First), which makes it the duty of all carriers to exert every reasonable effort to make and maintain agreements with their employees to settle all disputes arising out of the application of such agreements or otherwise; (5) violated the provisions of Section 2, Seventh, of the Railway Labor Act (45 U.S.C.A., Section 152, Seventh), which prohibits any carrier from changing rates of pay or working conditions of those employees as a class as embodied in collective bargaining agreements except in the manner prescribed in such agreements; and (6) violated the provisions of Section 6 of the Railway Labor Act (45 U.S.C.A., Section 156), because it involved the changing of rates of pay, rules or working conditions of United's employees embodied in the agreement of August 3, 1959, without complying with the procedures set forth in such section. (R. 9-12.)

It was also alleged that United's refusal to accept and process grievances of former Capital employees submitted to it in accordance with the provisions of said Brotherhood-Capital bargaining agreement of August 3, 1959, violated the requirements of Section

204 of the Railway Labor Act (45 U.S.C.A., Section 184), which requires that all disputes of employees growing out of grievances or out of interpretation of collective bargaining agreements are to be settled by a Board of Adjustment. (R. 11.)

In the proceedings in the District Court the Brotherhood and United agreed on all of the material facts alleged in the complaint. This is evidenced by the cross-motions for summary judgment filed by the parties. (R. 18, 48.)[4]

There was thus presented for adjudication of the District Court a clear-cut legal controversy falling within the jurisdiction of that Court under Sections 1331, 1337, 2201, and 2202 of Title 28 of the United States Code. (28 U.S.C.A., Sections 1331, 1337, 2201, and 2202). However, the District Court did not adjudicate this controversy, but granted United's alternative motion to dismiss the complaint on the ground that the Court was without jurisdiction of the subject matter of the complaint because it related to a dispute as to who are the representatives, under the Railway Labor Act, of employees of United, and that exclusive jurisdiction to determine such a dispute rests with the National Mediation Board under Section 2, Ninth, of the Railway Labor Act. (R. 75.)

On appeal, the Court of Appeals affirmed the action of the District Court in dismissing the complaint. (R. 1a.)

The Brotherhood has sought full representation rights for the entire craft or class of some 12,000 em-

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[4] United did introduce by way of affidavit (R. 20-41, 68) many conclusionary statements, which the Court of Appeals found were irrelevant to the issues raised by the complaint. (Appendix B, *infra*, page 6a, footnote 2.)

ployees of United Air Lines, of which the employees covered by the collective bargaining agreement here involved are a part, pursuant to an application filed with the National Mediation Board on August 24, 1962, for certification under the Railway Labor Act as representative of such craft or class. (Mediation Board Docket No. R-3590.) The Mediation Board has been unable to hold an election to determine the representative for the entire craft or class as a result of suits to enjoin such election brought by United Air Lines and by a group of employees of United Air Lines in the United States District Court for the District of Columbia which are now before the United States Court of Appeals for the District of Columbia Circuit for determination. *United Air Lines, Inc.* v. *National Mediation Board,* Case No. 17,777; *National Mediation Board, et al.* v. *Association for the Benefit of Non-Contract Employees,* Case No. 18,068; *and Brotherhood of Railway and Steamship Clerks* v. *Association for the Benefit of Non-Contract Employees,* Case No. 18,072.

REASONS FOR GRANTING WRIT

1. The Decision Below Deprives the Brotherhood of Any Forum in Which to Litigate the Important Federal Issue of Whether Its Agreement With Capital Survived the United-Capital Merger

The decision of the Court of Appeals deprives the Brotherhood and former Capital employees covered by the agreement of August 3, 1959, of any forum in which to adjudicate Brotherhood contention that United was [redacted] legally required under the Railway Labor Act, the provisions of the agreement, and the provisions of Delaware law and of the merger contract executed pursuant thereto to assume the obligations of such agreement as the surviving carrier of United's merger with Capital. The Civil Aeronautics Board

declined to decide this issue and the National Mediation Board, although agreeing with the Brotherhood's interpretation of the agreement, held that it did not have jurisdiction to determine the question. United itself frustrated the arbitration of the dispute under the Board of Adjustment provisions of the agreement by refusing to accept and process grievances thereunder.

The National Mediation Board, which both the District Court and the Court of Appeals held had exclusive jurisdiction of the dispute between the Brotherhood and United under Section 2, Ninth of the Railway Labor Act, clearly cannot determine the legal issue presented by the complaint under that Section.

The complaint (R. 12, 13) requested that the District Court (1) declare the legal rights of the parties with respect to the agreement of August 3, 1959, upon consummation of the merger of United and Capital; (2) declare that United is a successor or assign of Capital within the meaning of the provisions of Article 1(b) of such agreement; (3) declare that United assumed the liabilities and duties of the agreement by reason of the provisions of Section III, paragraph 1 of the merger contract between Capital and United; (4) declare that by operation of the laws of Delaware United is bound by the provisions of the agreement; and (5) issue an injunction enjoining United from continuing its refusal to apply the provisions of the agreement.

Under Section 2, Ninth, of the Railway Labor Act (45 U.S.C.A., Section 152, Ninth) the Mediation Board has authority to grant only the following relief:

> "* * * to certify to both parties [i.e. the disputing unions], in writing * * * the name or names of the

individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, and certify the same to the carrier. Upon receipt of such certification the carrier shall treat with the representative so certified as the representative of the craft or class for the purposes of this chapter."

Action by the Mediation Board under Section 2, Ninth, would give none of the relief requested in the complaint. At most it would require United to bargain with the Brotherhood for an entirely new contract to cover the employees of United here involved, as well as other employees of United not involved, and, after months and perhaps years of such bargaining, including possibly even Presidential Emergency Board proceedings and a strike, would enable the Brotherhood to secure such a contract. On the other hand, the Brotherhood's position in this lawsuit is that regardless of what the ultimate representation might be for the employees covered by the Brotherhood-Capital bargaining agreement of August 3, 1959, United was required on June 1, 1961, when the merger was consummated to assume the obligations of that agreement and apply it to the former Capital employees governed by that agreement who then became employees of United until the agreement was changed in accordance with the provisions of the Railway Labor Act.

The rights of the former capital employees who are now United employees to the benefits of said agreement of August 3, 1959, on and after June 1, 1961, and their right to different benefits under a different contract negotiated sometime in the indefinite future following a Mediation Board proceeding under Section 2, Ninth (including a representation election) are clearly

not the same thing and call for an entirely different type of relief.

The fact that the Brotherhood seeks representation rights for the entire craft or class of United employees of which the former Capital employees here involved are a part before the National Mediation Board (see page 12 above) and the question of whether the Brotherhood does or does not secure such a certification has no relevancy to the determination of rights under the Brotherhood-Capital bargaining agreement of August 3, 1959. The failure of the Brotherhood to obtain such certification will not determine rights under that agreement on and after June 1, 1961, following the merger of Capital and United. Nor will issuance of such a certification by the Mediation Board determine any issue raised by the complaint or even automatically put such agreement into effect on United for any employee. All that the outcome of the certification proceeding will determine is whether or not United must in the future treat with the Brotherhood on behalf of the employees to which the certification extends. No obligation of United under said Brotherhood-Capital bargaining agreement of August 3, 1959, will be affected in any way.

It is submitted that the issue of whether or not a collective bargaining agreement between a union and an air carrier executed pursuant to the provisions of the Railway Labor Act survives a merger of that air carrier with another air carrier presents an important Federal question which deserves to be litigated upon the merits. It is also submitted that it is unfair to the Brotherhood and the employees involved to deprive them of any forum in which to obtain an adjudication of this issue.

2. The Decision of the Court of Appeals Is in Conflict With the Decision of Another Circuit

The decision below is in direct conflict with the decision of the Second Circuit in *Livingston* v. *John Wiley & Sons*, 313 F. 2d 52 (1963), *cert. granted* 373 U.S. 908 (Case No. 911).

The dispute between Wiley & Sons and the union concerned a collective bargaining agreement entered into between the union and Interscience Publishers, Inc., in 1945 and revised from time to time. On October 2, 1961, Interscience effected a consolidation with Wiley & Sons. The 80 employees of Interscience became employees of the Wiley Company which also had 300 other employees. Interscience before the consolidation of the Wiley company thereafter took the position that the agreement was automatically terminated for all purposes by the consolidation and that all rights of the union and the employees arising out of the agreement were at an end. The Wiley Company refused to recognize the seniority of the former Interscience employees or any other rights under the contract. Nor did it recognize the appellant union or any other union. Both before and after the consolidation took place the union involved took the position that the agreement was not terminated by the consolidation and certain rights of the employees had become vested. When the Wiley Company refused to agree with this position, the union brought suit in a United States District Court under Section 301 of the Labor-Managemnet Relations Act (29 U.S.C.A., Section 185) to compel the Wiley Company to arbitrate the dispute between the parties under the grievance and arbitration provisions of the agreement. The decision of the Second Circuit held that the collective bargaining agreement and the rights arising therefrom were not necessarily terminated by

the consolidation and that the Wiley Company must arbitrate the dispute as to the survival of the contract pursuant to the provisions thereof.

The Court of Appeals in the present case held that the decision in the *Wiley & Sons* case was distinguishable since "we hold that the instant case involves a representation dispute and not merely an action sounding in contract." (Appendix B, page 9a.) It is submitted that this attempted distinction involves circular reasoning and is completely erroneous. The only differences between the *Wiley & Sons* situation and the present case are (1) the collective bargaining agreement in the *Wiley & Sons* case, unlike the one here involved, did not provide that it was binding upon successors and assigns of the contracting company, and (2) the suit was under Section 301 of the Labor-Management Relations Act. The presence in the contract here involved of a provision making the agreement binding on successors and assigns of Capital makes even a stronger case than in the *Wiley & Sons* situation for the fact that the agreement survived the merger. The absence from the Railway Labor Act of a provision such as Section 301 of the Labor-Management Relations Act is of no significance in light of the decision of this Court in *International Association of Machinists* v. *Central Airlines,* 372 U.S. 682 (1963). This is particularly true in light of the fact that one of the provisions of the collective bargaining agreement here involved, which the Brotherhood seeks to enforce, is a Section 204 Railway Labor Act contract which this Court held in the *Machinists* case (page 692) "like the Labor-Management Relations Act Section 301 contract, is a Federal contract and is therefore governed and enforceable by Federal law in the Federal courts."

If the Federal courts had jurisdiction to entertain the suit in the *Wiley & Sons* case, the District Court clearly had jurisdiction to entertain the suit by the Brotherhood against United. United suggested to the Court of Appeals that the present case differed from the *Wiley & Sons* case because of the finding on page 58 of the Second Circuit decision that no rival union was there involved whose rights would be interfered with by a pressing of the employees' claims while here there was a rival union, i.e., the I.A.M. because the latter represents approximately 500 of the 2,700 Capital employees taken over by United. Obviously, at best, this argument would be applicable only to those employees and not to the other 2200 former Capital employees involved. In addition, the Brotherhood did not assert any right to override any agreement made by the IAM with United covering the 500 employees in question. The IAM clearly recognized this fact when it advised that there was "no dispute between the Brotherhood of Railway Clerks and the IAM with respect to the representation of employees and, accordingly, the IAM has no interest and no desire to be a party to the litigation." (R. 67.)

3. The Decision Below Conflicts With Decisions of This Court

The Brotherhood submits that the decision below is in direct conflict with the decision of this Court in *International Association of Machinists* v. *Central Airlines*, 372 U.S. 682, referred to above. In that case the IAM brought suit to enforce a grievance decision made under the provisions of a collective bargaining agreement executed pursuant to the requirements of Section 204 of the Railway Labor Act (45 U.S.C.A., Section 184). The decision by this Court reversed the judgment of

the Court of Appeals for the Fifth Circuit (295 F. 2d 209) holding that the District Court had no jurisdiction to entertain the complaint because there was no Federal cause of action. This Court held that it is Federal law which determines whether the contract was valid and enforceable according to its terms. The instant suit is to enforce an agreement between the parties executed pursuant to the provisions of the Railway Labor Act, including Article 43 thereof, which provides for a creation of a Board of Adjustment required by the provisions of Section 204 of the statute. (Exhibit A to the Complaint, page 43, affixed to R. 14.)

4. The Court of Appeals Erred in Holding That the Suit by the Brotherhood Involves a Representation Dispute

Both the District Court and the Court of Appeals held that the National Mediation Board has exclusive jurisdiction under Section 2, Ninth, of the Railway Labor Act of the subject matter of the Brotherhood complaint because it involves a representation dispute. (R. 75; Appendix B, page 9a.) This holding is not only erroneous but involves a misinterpretation of the Railway Labor Act.[5] Section 2, Ninth, is applicable only to a dispute "among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of this chapter." Neither the decision of the District Court nor the decision of the Court of Appeals

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[5] The decision of the Court of Appeals is also factually in error when it states (Appendix B, p. 3a) that it is not contended that, by reason of the provisions of Section III, paragraph 1 of the merger agreement between Capital and United, United intended to assume the obligations of Capital under any of its collective bargaining agreements. Paragraphs 10 and 20 of the complaint (R. 5, 6, 9, 10) specifically allege such an assumption under the merger contract of the obligations of the collective bargaining agreement.

explains who are the parties to the representation dispute which they find to be present. Indeed, the District Court seems to have invented a new type of dispute other than those involved in the three cases upon which both it and the Court of Appeals rely. (R. 74.) Certainly there is no such dispute among the 2200 employees of United who are unrepresented on the property of that carrier and whose rights under the collective bargaining agreement with Capital the complaint seeks to enforce, nor is there any representation dispute between the IAM and the Brotherhood with respect to the approximately 500 former Capital employees covered by the Brotherhood agreement with that carrier who are represented on United by the IAM. The Brotherhood did not seek to have the District Court adjudicate that it is the duly designated representative under the Railway Labor Act of these 500 employees. The Brotherhood sought only by its complaint to establish that United was under a duty to assume the obligations of the Brotherhood-Capital agreement on and after June 1, 1961, as to all former employees of Capital covered by that agreement and that rights of such employees of United began to accrue on that date. It is clear that United and the IAM had a right after June 1, 1961, to negotiate a change in the agreement of August 3, 1959, between Capital and the Brotherhood governing the 500 ramp and stores employees in accordance with the requirements of the Railway Labor Act. (See *infra*, p. 21.)

The decision of the District Court which was affirmed by the Court of Appeals equates the contract rights of the employees involved with representation rights under the Railway Labor Act. This is clearly in error.

Representation rights under that statute flow out of Sections 2, Third, and Fourth and arise out of designations made by the employees certified by the Mediation Board. Contract rights, on the other hand, are based on Sections 2, First, and Seventh, and Section 6 of the statute, and the law governing contracts. Once contract rights are established under a collective bargaining agreement executed pursuant to the Railway Labor Act they may be extinguished only in accordance with the terms of the contract and Section 6 of the statute. Even a change in representation has no effect upon contract rights. The National Mediation Board has pointed out this fact in its official publication "Administration of the Railway Labor Act by the National Mediation Board, 1934-1957". At pages 24 and 25, the Mediation Board states in pertinent part as follows:

> "*Change of representatives under existing agreements.*—When there is an agreement in effect between a carrier and its employees signed by one set of representatives and the employees choose new representatives who are certified by the Board, the Board has taken the position that a change in representation does not alter or cancel any existing agreement made in behalf of the employees by their previous representatives. The only effect of a certification by the Board is that the employees have chosen other agents to represent them in dealing with the management under the existing agreement. *If a change in the agreement is desired, the new representatives are requird to give due notice of such desired change as provided by the agreement or by the Railway Labor Act.* Conferences must then be held to agree on the changes exactly as if the original representatives had been continued. *The purpose of such a policy is to emphasize a principle of the*

> *Railway Labor Act that agreements are between the employees and the carrier, and that the change of an employee representative does not automatically change the contents of an agreement.*" (Emphasis supplied.)

Thus, rights arising out of a collective bargaining agreement under the Railway Labor Act survive a change in the representative who negotiates the agreement.

The inherent distinction between contract rights and representation is also demonstrated by numerous examples of the assumpiton of the obligations of collective bargaining agreements in railroad and air carrier mergers without regard to questions of representation. *City of Nashville, Tennessee* v. *United States,* 155 F. Supp. 98, 105 (U.S.D.C. M.D. Tenn., Nashville Div., 1957), aff'd *per curiam* 355 U.S. 63. At page 105 of the opinion of the District Court in that case, approving the merger of the Louisville & Nashville Railroad and the Nashville, Chattanooga & St. Louis Railway, the Court spoke as follows:

> "The approval by this court of the order of the Interstate Commerce Commission of March 1, 1957, approving the merger upon the conditions therein stated, is based upon the express condition that the rights of the employees of the Nashville, Chattanooga & St. Louis Railway Company shall be protected equally with those of employees of the Louisville and Nashville Railroad Company as relates to seniority and to other conditions of employment in accordance with the express understanding as stated at the hearing by the attorney for the Interstate Commerce Commission and by attorneys for the two railroad carriers involved herein, disclosed in finding of fact Number 15."

The assurances referred to as set forth in Finding No. 15 read in pertinent part as follows (155 F. Supp. at 103):

> "The attorney for the Louisville and Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway Company stated that, in the merger agreement between the railroads, it is expressly provided that the Louisville and Nashville will assume any and all obligations and contracts of the Nashville, Chattanooga & St. Louis Railway Company, *including its negotiated union bargaining agreements.*" (Emphasis theirs.)

Examples of a similar assumption of contract obligations in airline mergers appear in the record with respect to the *Colonial-Eastern Merger* and the *Alaska Coastal Airlines-Ellis Air Lines Merger* (R. 59-66).

The decision of the Court of Appeals also adverted to practical difficulties in applying the agreement to less than an entire craft or class of United employees. Article 1(b) of the agreement, quoted above, page 4, provides a means of meeting any such problem in the agreement of the parties to meet and negotiate for "the procedure to be followed and the protection to be afforded the employees involved." In addition, any such difficulties did not prevent the Second Circuit in the *Wiley & Sons* case from holding that the agreement there involved did not automatically terminate upon a consolidation. Moreover, that Court believed that any such problem could be taken care of by the arbitrator. 313 F. 2d at 59, footnote 5. Likewise, in the present case if the parties were unable to meet any such problem through negotiations under Article 1(b) the problems could be determined by arbitration before an Adjustment Board under Article 43.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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February, 1964

APPENDIX A

Judgment

(Filed December 17, 1963)

Appeal from the United States District Court for the Southern District of Ohio.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of Ohio, and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby affirmed.

Approved for entry:

s/ HARRY PHILLIPS,
United States Circuit Judge.

APPENDIX B

No. 15176

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES,
Plaintiff-Appellant,

v.

UNITED AIR LINES, INC., *Defendant-Appellee.*

Appeal from the United States District Court for the Southern District of Ohio, Western Division.

Decided December 17, 1963.

Before MILLER, O'SULLIVAN and PHILLIPS, Circuit Judges.

PHILLIPS, Circuit Judge. This case arises out of the merger of Capital Airlines, Inc. into United Airlines, appellee herein, on June 1, 1961. The facts concerning the background and details of this merger are set forth in *Northwest Airlines, Inc.* v. *C.A.B.*, 303 F.2d 395 (C.A. D.C.), affirming the approval of the merger by the Civil Aeronautics Board.

In May 1947 appellant was certified by the National Mediation Board pursuant to the Railway Labor Act,[1] 45

[1] The Railway Labor Act, first adopted in 1926, was extended to air carriers in 1936 by the additions of Title II, 45 U.S.C. § 181 et seq, which applies all the provisions of the Act (with certain exceptions not involved here) to "every common carrier by air . . . and . . . person who performs any work as an employee . . . of such carrier." 45 U.S.C. § 181.

U.S.C. § 151 et seq, as the designated bargaining agent for the employees of Capital in the craft or class of clerical, office, stores, fleet and passenger service. Pursuant to this certification, appellant and Capital entered into a collective bargaining agreement effective August 1, 1948, which, with certain revisions, was in effect immediately prior to the time Capital was merged into appellee.

Article 1(b) of this collective bargaining agreement contained the following provision:

> "All provisions of this agreement shall be binding upon the successors or assigns of the Company (i.e. Capital) and in case of a consolidation or merger, the Company (i.e. Capital) will notify the Brotherhood at least 90 days prior to such consolidation, or merger, and representatives of the Company (i.e. Capital) and the Brotherhood will meet and negotiate for the procedure to be followed and the protection to be afforded the employees involved."

The merger agreement between appellee and Capital provided as follows:

> "United . . . shall be subject to all of the restrictions, disabilities and duties of each of the Constituent Corporations; . . . and all debts, liabilities and duties of each of the Constituent Corporations shall thenceforth attach to United, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it."

Appellee announced from the outset of the merger proceedings that it would not assume or be bound by any of Capital's labor agreements. It is not contended that by the above-quoted language of the merger agreement appellee intended to assume the obligations of Capital under any of its collective bargaining agreements, or that appellee at any time made any representations to the effect that it as successor would be bound by the agreement between appellant and Capital.

Appellant participated as an intervenor in the proceedings before the Civil Aeronautics Board, urging that, if that Board should approve the proposed merger, this collective bargaining agreement be imposed upon appellee as a condition thereof. The Board refused to impose this condition in its order approving the merger, stating that this was a matter to be worked out "in accordance with regular procedures applicable to the matter of representation and agreement." Appellant appealed from the Board's decision to the Court of Appeals for the District of Columbia, but thereafter withdrew its appeal with the acquiescence of the other parties.

This suit was filed by appellant seeking a declaration that appellee was bound by the terms of appellant's collective bargaining agreement with Capital and to enjoin appellee from refusing to apply that agreement to those former employees of Capital covered thereby who became employees of appellee upon consummation of the merger. Appellee moved to dismiss the complaint or for summary judgment upon the following grounds: The cause involved a dispute as to who were the representatives under the Railway Labor Act of certain of its employees and hence exclusive jurisdiction lay with the National Mediation Board; if the requested relief were granted appellee would be required to treat with a bargaining representative for a minority of a craft or class, contrary to the provisions of the Railway Labor Act; that the agreement between appellant and Capital revealed on its face that it could not be legally or practically applied to less than an entire craft or class; that another labor organization had representation rights for part of the group upon which appellant was seeking to impose its agreement with Capital and hence this other labor organization was an indispensable party to the action.

Appellant filed a cross-motion for summary judgment upon the ground that the material facts alleged in the

complaint were not in dispute and that appellant on such undisputed facts is entitled to judgment as a matter of law.

The District Court denied both motions for summary judgment for lack of jurisdiction and granted appellee's motion to dismiss the complaint, holding that the case relates to a dispute as to who are representatives under the Railway Labor Act of certain employees of appellee and that exclusive jurisdiction to determine such a dispute vests with the National Mediation Board under the provisions of Section 2, Ninth, of the Railway Labor Act, 45 U.S.C. § 152, Ninth.

We affirm the District Court.

Three decisions of the Supreme Court make it clear that the federal courts have no jurisdiction over the solution of representation disputes. *Switchmen's Union of North America* v. *National Mediation Board*, 320 U.S. 297; *General Committee* v. *Missouri-Kansas-Texas Railroad Co.*, 320 U.S. 323; *General Committee* v. *Southern Pacific Co.*, 320 U.S. 338.

The facts of this case demonstrate the soundness of these three decisions and the impracticality of judicial interference in representation disputes over which Congress has conferred jurisdiction upon the National Mediation Board. 45 U.S.C. § 152. Prior to the merger of Capital into appellee, Capital was substantially the smaller of the two airlines. Immediately prior to the merger it had about 6500 non-management employees, about 6000 of whom were represented by labor organizations under six agreements. Appellee had 21,000 non-management employees, about 13,500 of whom were represented by nine labor organizations under twelve agreements. At the time of the merger there were approximately 2700 employees of Capital in the clerical craft or class represented by appellant and covered by the collective bargaining agreement here sought to be enforced against appellee. The number of employees of

appellee in this general craft or class numbered approximately 10,000, a part of whom had been organized pursuant to a National Mediation Board election and divided into two separate classifications. Immediately prior to the merger, approximately 2200 of the 10,000 employees of appellee in these classifications were represented by the International Association of Machinists under what is designated in the record as the I.A.M. Ramp and Stores Agreement. The remaining 7800 employees of appellee in this general class were not represented by a labor organization but were under uniform personnel regulations covering wage rates and fringe benefits.

After the merger the former Capital employees performing work covered under the I.A.M. Ramp and Stores Agreement came under that agreement, and about 530 of the 2700 Capital employees formerly represented by appellant are now represented by the International Association of Machinists. The remaining 2170 former Capital employees are now working alongside the 7800 unorganized employees of appellee in the same job classifications, and all are subject to the same pay schedules, benefits and working conditions established by appellee's personnel regulations.[2]

The record further disclosed that appellant seeks to represent the entire craft or class of employees of appellee in the clerical, office, stores, fleet and passenger service, numbering some 12,170 employees, and has filed an application with the National Mediation Board asking for such certification under Section 2, Ninth, 45 U.S.C. § 152, Ninth, and there is now pending before the Court of Appeals of the District of Columbia Circuit a case involving an aspect of that proceeding, styled *United Air Lines* v. *National Mediation Board et al.*, Case No. 17,777.

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[2] Appellee contends that, as a result of coming under its personnel regulations, these former Capital employees have realized an improvement in their pay and related benefits. We agree with appellant that this is not a matter of legal significance in this case.

If the District Court had exercised jurisdiction in this case and had granted the relief sought in the complaint, such a determination clearly could have applied to no more than the 2700 former Capital employees, constituting a minority of this class or craft of appellee's employees, 530 of whom are now represented by the International Association of Machinists. Such an impractical result demonstrates the soundness of the holding of the Supreme Court in the three above-cited cases that there is to be no judicial intervention in such representation disputes.

By skillful pleading in this case, appellant has tried to avoid the consequences of these three Supreme Court decisions above cited, which clearly otherwise would be controlling. Appellant contends that the complaint does not ask for an adjudication of a dispute concerning representation rights, but involves a dispute between the representative of employees and a carrier concerning the latter's contract obligations. It is significant, however, that the first paragraph of the complaint, after stating that this is an action for declaratory judgment, proceeds to make the following averment;

> "It is brought because there now exists, as will hereinafter be more fully described, an actual controversy between the parties with respect to maintenance of a collective bargaining agreement executed pursuant to the provisions of the Railway Labor Act (45 U.S.C.A. Section 151 et seq.)."

Looking through form to substance, we agree with the District Court that, although the suit is cast in the form of an action under the law of contracts, it in fact involves a representation dispute. Even though an action is brought as one sounding in contract the courts have no jurisdiction "where 'validity' of the contract depends upon the merits of a representation dispute." *Division No. 14, Order of Radio Telegraphers* v. *Leighty*, 298 F.2d 17, 20 (C.A. 4).

Appellant relies strongly upon the fact that, prior to instituting this action, it filed with the National Mediation Board an application pursuant to Section 5, Second, of the Railway Labor Act, 45 U.S.C. § 155, Second, for an interpretation of the application or meaning of the collective bargaining agreement here sought to be enforced, but the Board found that it did not have jurisdiction to spell out the rights and obligations of the parties after the merger of Capital into appellee. It is argued that the dismissal of the complaint by the District Court leaves appellant without any forum in which to adjudicate appellee's obligations under appellant's agreement with Capital.

As hereinabove pointed out, appellant thereafter filed an application with the National Mediation Board asking for certification to represent the entire craft or class of appellee's employees in the clerical, office, stores, fleet and passenger service, and that proceeding is pending at the present time.

Regardless of what action may have been taken or may hereafter be taken by the National Mediation Board in this dispute, it is our opinion that the District Court was correct in holding that it did not have jurisdiction. As said by the Supreme Court in *General Committee* v. *M.-K.-T.*, 320 U.S. 323, 336-37:

> "It seems to us plain that when Congress came to the question of these jurisdictional disputes, it chose not to leave their solution to the courts. . . . However wide may be the range of jurisdictional disputes embraced within § 2, Ninth, Congress did not select the courts to resolve them. . . . If the present dispute falls within § 2, Ninth, the administrative remedy is exclusive. If a narrower view of § 2, Ninth is taken, it is difficult to believe that Congress saved some jurisdictional disputes for the Mediation Board and sent the parties into the federal courts to resolve the others. . . .
>
> "In view of the pattern of this legislation and its history the command of the Act should be explicit and

> the purpose to afford a judicial remedy plain before an obligation enforceable in the courts should be implied. Unless that test is met the assumption must be that Congress fashioned a remedy available only in other tribunals. There may be as a result many areas in this field where neither the administrative nor the judicial function can be utilized. But that is only to be expected where Congress still places such great reliance on the voluntary process of conciliation, mediation and arbitration. . . . Courts should not rush in where Congress has not chosen to tread."

In *Division No. 14, Order of Radio Telegraphers* v. *Leighty*, 298 F.2d 17, 19 (C.A. 4), involving a merger of railroads, the Court dismissed for lack of jurisdiction, saying:

> "This trilogy of cases [referring to the three Supreme Court decisions above cited] authoritatively determines that judicial intervention in railway labor disputes is restricted to the narrowest scope; that large segments of this field remain subject to the voluntary processes of conciliation, mediation and arbitration; that particularly in representation disputes the adjudicatory function has been committed by Congress to the National Mediation Board. . . ."

All the cases relied upon by appellant have been considered carefully, including: *Steele* v. *Louisville & Nashville R.R. Co.*, 323 U.S. 192; *Virginian Railway Co.* v. *System Federation*, 300 L.S. 515; *Brotherhood of Railroad Trainmen* v. *Smith*, 251 F.2d 282 (C.A. 6), affirming 144 F. Supp. 869 (S.D. Ohio); *Commercial Telegraphers' Union* v. *Western Union Telegraph Co.*, 53 F. Supp. 90 (D.D.C.); and *Livingston* v. *John Wiley & Sons, Inc.*, 313 F.2d 52 (C.A. 2), cert. granted 373 U.S. 908. We find all these cases to be distinguishable from this case, since we hold that the instant case involves a representation dispute and not merely an action sounding in contract.

The action of the District Court in dismissing the complaint for lack of jurisdiction is affirmed.

APPENDIX C

Memorandum Opinion of District Court

(Filed August 9, 1962)

Although the defendant's motion is alternative in form, for present purposes it may be stated that this case has been submitted to the Court on cross motions for summary judgment; the alternative request of the defendant's motion is that the action be dismissed for lack of jurisdiction. Each party has filed extensive, even exhaustive, memoranda in support of its own position and in opposition to that urged by the other, and has filed protracted and detailed affidavits. Additionally, careful and capable oral arguments were made, and it might be stated that the transcript of that argument has been reread since the other filings and authorities have been studied.

After consideration of the various contentions presented, few of which can be summarily disposed of, it has been concluded that the first ground set forth in the defendant's motion provides an obstacle to the taking of jurisdiction by this court. That ground is stated in the motion as follows:

> "1. The Court is without jurisdiction of this cause since it relates to a dispute as to who are the representatives under the Railway Labor Act of certain of the employees of United Air Lines, Inc. Exclusive jurisdiction to determine such a dispute vests with the National Mediation Board under the provisions of Section 2, Ninth, of the Railway Labor Act (45 U.S.C. § 152, Ninth)."

Despite some possible clouding of this point, and perhaps even some attempted shift of position, on the part of the plaintiff, the fact remains that its Complaint clearly states that this action was brought because of the existence of "an actual controversy" under a "collective bargaining agreement executed pursuant to the provisions of the Railway Labor Act (45 U.S.C. Sections 151 et seq.)". After having so brought the action, plaintiff now contends (p. 32, plaintiff's first brief) that the issue here presented is "for the courts under the law of contracts . . . and not

an issue within the competence of the Mediation Board under the Railway Labor Act."

Under this theory, and upon the contention that this suit is not concerned with either a "representation dispute" or a "jurisdictional dispute between labor organizations," plaintiff seeks to avoid the consequences of three 1943 decisions by the Supreme Court which would otherwise be controlling. (*Switchmen's Union of North America* v. *National Mediation Board*, 320 U.S. 297; *General Committee* v. *M.K.T.R. Railroad Co.*, 320 U.S. 323; and *General Committee* v. *Southern Pacific Co.*, 320 U.S. 338). Without here holding that this action fails to fall within either of those two categories nor that the triune of 1943 cases are limited thereto, we find them to have present application.

Plaintiff has urged (p. 7, second brief) that *Randolph* v. *Missouri, K. & T. R. Co.*, 85 F. Supp. 846 (D.C. Mo., 1949), is in point, but it appears to be distinguishable on the facts. It is true that this plaintiff had earlier attempted to have the National Mediation Board declare that it was the collective bargaining representative of certain of defendant's employees by requesting an interpretation of a mediation agreement (Complaint, Exhibit B). However, the plaintiff has never requested that the Board investigate any dispute as to who has been chosen by a majority of the employees as their authorized representative, nor has the plaintiff requested the Board to make a bargaining agent certification. The latter two requests are among those within the jurisdiction of the National Mediation Board (45 U.S.C. Section 152, Ninth). Hence the rationale of the *Randolph* case has no application here.

In spite of the fact that anything said following the above expression of our conclusion is obiter dictum, we feel constrained to observe that despite its own protestations we fail to see how this action could be consummated without joinder of the International Association of Machinists.

Defendant's motion to dismiss for lack of jurisdiction is found to be well taken.

APPENDIX D

STATUTES INVOLVED

Judicial Code

Sections 1331, 1337, 2201 and 2202 of Title 28 of the United States Code (28 U.S.C.A., Sections 1331, 1337, 2201 and 2202):

Section 1331:

"The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $3,000, exclusive of interest and costs, and arises under the Constitution, laws or treaties of the United States."

* * * * *

Section 1337:

"The district courts shall have original jurisdiction of any civil action or proceeding arising under any Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies."

* * * * *

Section 2201:

"In a case of actual controversy within its jurisdiction, except with respect to Federal taxes, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such."

* * * * *

Section 2202:

"Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment."

Railway Labor Act

Sections 2, First; 2, Seventh; 2, Ninth; 5, Second; Section 6 and Section 204 of the Railway Labor Act (45 U.S.C.A., Sections 152, First; 152, Seventh; 152, Ninth; 155, Second; 156 and 184):

Section 2, First:

"First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof."

* * * * *

Section 2, Seventh:

"Seventh. No carrier, its officers, or agents shall change the rates of pay, rules, or working conditions of its employees, as a class, as embodied in agreements except in the manner prescribed in such agreements or in section 156 of this title."

* * * * *

Section 2, Ninth:

"Ninth. If any dispute shall arise among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of this chapter, it shall be the duty of the Mediation Board, upon request of either party to the dispute, to investigate such dispute and to certify to both parties, in writing, within thirty days after the receipt of the invocation of its services, the name or names of the individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, and certify the same to the carrier. Upon receipt of such certification the carrier shall treat with the representative so certified as the representative of the craft or class for the purposes of this chapter. In such an investigation, the Mediation Board shall be authorized to take a

secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier. In the conduct of any election for the purposes herein indicated the Board shall designate who may participate in the election and establish the rules to govern the election, or may appoint a committee of three neutral persons who after hearing shall within ten days designate the employees who may participate in the election. The Board shall have access to and have power to make copies of the books and records of the carriers to obtain and utilize such information as may be deemed necessary by it to carry out the purposes and provisions of this paragraph."

* * * * *

Section 5, Second:

"Second. In any case in which a controversy arises over the meaning of the application of any agreement reached through mediation under the provisions of this chapter, either party to the said agreement, or both, may apply to the Mediation Board for an interpretation of the meaning or application of such agreement. The said Board shall upon receipt of such request notify the parties to the controversy, and after a hearing of both sides give its interpretation within thirty days."

* * * * *

Section 6:

"Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. In every case where such notice of intended change has been given, or conferences are being held with reference thereto,

or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon, as required by section 155 of this title, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board."

* * * * *

Section 204:

"The disputes between an employee or group of employees and a carrier or carriers by air growing out of grievances, or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on April 10, 1936 before the National Labor Relations Board, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to an appropriate adjustment board, as hereinafter provided, with a full statement of the facts and supporting data bearing upon the disputes.

"It shall be the duty of every carrier and of its employees, acting through their representatives, selected in accordance with the provisions of sections 181-188 of this title, to establish a board of adjustment of jurisdiction not exceeding the jurisdiction which may be lawfully exercised by system, group, or regional boards of adjustment, under the authority of section 153 of this title.

"Such boards of adjustment may be established by agreement between employees and carriers either on any individual carrier, or system, or group of carriers by air and any class or classes of its or their employees; or pending the establishment of a permanent National Board of Adjustment as hereinafter provided. Nothing in sections 151-163 and 181-188 of this title shall prevent said carriers by air, or any class or classes of their employees, both acting through their representa-

tives selected in accordance with provisions of sections 181-188 of this title, from mutually agreeing to the establishment of a National Board of Adjustment of temporary duration and of similarly limited jurisdiction."

Delaware Statutes

Section 328 of the Delaware General Corporation Law (8 Del. C., Section 328):

"§ 328. Liability of corporation, etc., impairment by certain transactions.

"The liability of corporations created under this chapter, or existing under the laws of this State, or the stockholders, directors or officers thereof, or the rights or remedies of the creditors thereof, or of persons doing or transacting business with the corporation, shall not in any way be lessened or impaired by the sale thereof, or by the increase or decrease in the capital stock of any such corporation, or by the consolidation or merger of two or more corporations or by any change or amendment in the certificate of incorporation."

* * * * *

Section 259 (a) of the Delaware General Corporation Law (8 Del. C, Section 259 (a)):

"§ 259. Status, rights, liabilities, etc., of constituent and surviving corporations following merger or consolidation.

"When an agreement of consolidation or merger shall have been signed, acknowledged, filed and recorded, in accordance with the requirements of this subchapter, for all purposes of the laws of this State the separate existence of all the constituent corporations, party to said agreement, or of all such constituent corporations except the one into which the other or others of such constituent corporations have been merged, as the case may be, shall cease and the constituent corporations shall become a new corporation, or be merged into one of such corporations, as the case may be, in accordance with the provisions of said

agreement, possessing all the rights, privileges, powers and franchises as well of a public as of a private nature, and being subject to all the restrictions, disabilities and duties of each of such corporations so consolidated or merged, and all and singular, the rights, privileges, powers and franchises of each of said corporations, and all property, real, personal and mixed, including in the case of banks or trust companies, without any order or any action on the part of any court or otherwise, appointments, designations, and nominations and all other rights and interests as trustee executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, trustee of estates of lunatics and in every other fiduciary capacity, and all debts due to any of said constituent corporations on whatever account, as well for stock subscriptions as all other things in action or belonging to each of such corporations shall be vested in the corporation resulting from or surviving such consolidation or merger; and all property, rights, privileges, powers and franchises, and all and every other interest shall be thereafter as effectually the property of the resulting or surviving corporation as they were of the several and respective constituent corporations, and the title to any real estate vested by deed or otherwise, under the laws of this State, in any of such constituent corporations, shall not revert or be in any way impaired by reason of this chapter; but all rights of creditors and all liens upon any property of any of said constituent corporations shall be preserved unimpaired, and all debts, liabilities, and duties of the respective constituent corporations shall thenceforth attach to said resulting or surviving corporation, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it."